

MPG 2010.1

BASELINE

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MARSHALL PROCEDURES AND GUIDELINES

OS01

ALTERNATIVE DISPUTE RESOLUTION PROCESS

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DOCUMENT HISTORY LOG

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PREFACE

P.1 PURPOSE

The purpose of this Directive is to prescribe the procedures and guidelines for Marshall Space Flight Center's (MSFC) Alternative Dispute Resolution (ADR) Program for the informal (pre-complaint) stage of the Equal Opportunity (EO) discrimination complaint process.

The MSFC ADR Program is a mediation process designed to resolve allegations of workplace discrimination through the facilitation of a neutral third party. It provides an impartial and independent forum for the parties to discuss the dispute and develop a realistic assessment of their own as well as the other party's position and alternatives. MSFC's ADR process is designed to ensure fairness for all parties, enforceability of agreements, and adherence to the Equal Employment Opportunity Commission (EEOC) core principles as outlined in EEOC Management Directive (MD) 110. The overall objectives of the ADR Program are to promote open communication between disputing parties, reduce costs, and resolve allegation at the lowest possible organizational level at the earliest opportunity.

P.2 APPLICABILITY

This procedure applies to MSFC and off-site locations.

P.3 AUTHORITY

- a. The Civil Rights Act of 1991
- b. Administrative Dispute Resolution Act of 1996
- c. EEOC Regulations at 29 CFR Part 1614
- d. NPD 2010.2, "Alternative Dispute Resolution"

P.4 APPLICABLE DOCUMENTS

EEOC Management Directive 110

P.5 REFERENCES

None

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P.6 CANCELLATION

None

Original Signed by
Carolyn S. Griner for

A. G. Stephenson
Director

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DOCUMENT CONTENT

1. DEFINITIONS

1.1 Alternative Dispute Resolution. A process designed to resolve disputes in a manner that avoids the cost, delay, and unpredictability of the traditional adjudicatory process.

1.2 Mediation. A dispute resolution process in which a trained, impartial third party helps two or more parties negotiate a consensual and informed resolution to disputes based on allegations of discrimination. Mediation emphasizes problem solving rather than a determination of fault or adversarial procedures.

2. RESPONSIBILITIES

2.1 EO Counselors. The EO Counselors are responsible for advising aggrieved persons (the individual alleging discrimination) that, where the Center agrees to offer ADR in a particular case, they may elect to participate in the Center's ADR program or continue in the traditional EO counseling process.

2.2 EO Officer. The EO Officer is responsible for management and administration of the ADR Program. As such, the EO Officer will monitor the process to ensure compliance with established policies, timeframes, and that terms of settlement agreements are implemented in a timely manner.

2.3 Mediator. The mediator is a trained neutral third party responsible for guiding and assisting disputing parties in reaching a resolution agreement that is acceptable, fair, and reasonable. The primary source of MSFC neutrals will be the General Services Administration (GSA) governmentwide equal opportunity services contract.

2.4 Management Representative. The Management Representative is a senior management official who has been delegated authority by the Center Director to enter into settlement agreements that are binding on the Center/Agency. As such, the Management Representative is responsible for ensuring that settlements are fair and reasonable as revealed by the facts developed during the mediation process and agreed to by the disputing parties. Management officials with direct involvement in the dispute will not serve as the person with settlement authority.

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3. PROCEDURE

This ADR process addresses disputes covered by Title VII of the Civil Rights Act of 1964, as amended (race, color, sex, religion, national origin, and reprisal); the Age Discrimination in Employment Act (age over 40); the Rehabilitation Act (physical or mental handicap); and the Equal Pay Act (discrimination on the basis of wages based on sex).

The process is voluntary for both the aggrieved individuals and the Center, and settlements are voluntary with no finding of fault on the part of either party.

The aggrieved individual is entitled to have a representative during the mediation process.

3.1 During the pre-complaint counseling stage of the process, the EO Counselor will inform the aggrieved individual of MSFC's voluntary ADR Program and offer the option to participate. If the aggrieved individual elects to participate in the mediation process and the Center agrees, the individual will sign the election and agreement forms to mediate (Appendices A and B). The total time allocated for both counseling and ADR shall not exceed 90 calendar days. Either party may terminate the ADR procedure at any time and return to the EEO process.

3.2 If the aggrieved individual and the Center agree to mediation, the EO Officer will assign a mediator who is acceptable to both parties. The mediator will be provided a letter of authority to mediate all aspects of the complaint. The EO Officer will also designate a management representative who is not directly involved in the case. The management representative will be provided a letter of authority granting ultimate authority to resolve the complaint. The EO Officer or Counselor will brief the management representative on the particulars of the allegation prior to mediation.

3.3 If a settlement is reached during the mediation, the mediator will reduce the terms of the settlement to writing (samples, Appendices C and D). The agreement will be reviewed by the Chief Counsel's Office for legal sufficiency. The settlement agreement will be signed by the aggrieved individual, his/her representative, the Management Representative, and other parties as deemed necessary. In considering resolutions, the Management Representative will adhere to appropriate laws, regulations, and Agency/Center policies. As such, the Management Representative should consult with the EO Officer, Chief Counsel, Human Resources, or other officials as appropriate during the course of

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the settlement negotiations. Agreements reached through ADR and signed by the appropriate parties are binding on the Agency and enforceable under current EEOC regulations.

3.4 All settlement agreements involving age discrimination will contain the appropriate settlement provisions required by the Older Workers Benefit Protection Act.

3.5 In the event that the parties are unable to reach a resolution, the aggrieved individual will be referred back to counseling. The EO Counselor will issue a notice of final interview and right to file a formal complaint to the aggrieved individual in accordance with 29 CFR Part 1614. Nothing said or done during attempts to resolve a complaint through ADR can be made the subject of an EEO complaint. Likewise, an agency decision not to engage in ADR, or not to make ADR available for a particular case, or an agency failure to provide a neutral party, cannot be made the subject of an EEO complaint.

3.6 Confidentiality. The mediation proceedings will be kept "in confidence" except where such disclosure would be permitted or required by law (see NPD 2010.2, Section 1.I, "Alternative Dispute Resolution.")

3.7 Criteria for Case Selection. The Center will consider requests for mediation on a case-by-case basis. The Center shall consider not using ADR in the following circumstances:

- Need for precedent or certainty
- Anticipation of bad faith
- When one party mainly seeks delay
- Public policy development - openness/record needed
- Options are dictated or limited by law
- Serious power imbalances exist
- Linkage to existing litigation
- Outcome will have significant effect on individuals not directly involved in the dispute
- ADR is an improper substitute for other required action
- Cases involving allegations of criminal activity
- Repeat filers unless all active cases are presented for settlement

3.8 Evaluation. At the conclusion of the mediation initiative, the parties to the mediation will be requested to complete an evaluation form. The information will assist the Center in evaluating the overall effectiveness of the ADR Program.

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4. RECORDS

Since confidentiality considerations will be maintained throughout the ADR process, no written records of the mediation proceedings will be maintained.

5. FLOW DIAGRAM

See Appendix E.

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APPENDIX A

MSFC'S DISPUTE RESOLUTION PROCESS ELECTION FORM

Dear Aggrieved Individual:

Your written consent is required for participation in the voluntary Alternative Dispute Resolution Process (ADRP). The ADRP is limited to sixty (60) days. If your complaint is not resolved through this process, it will be processed in accordance with the provisions of Title 29 CFR Part 1614.

- ☐ The MSFC Alternative Dispute Process has been fully explained to me.
- ☐ Yes, I want to participate in the Alternative Dispute Resolution Process.

I understand that by participating in this program, I am not waiving any rights for further processing of my complaint under Title 29 CFR Part 1614.

- ☐ No, I do not want to participate in the Alternative Dispute Resolution Process.

Aggrieved Individual's Signature

Date

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Management Representative's signature date

APPENDIX C

SAMPLE GENERAL SETTLEMENT AGREEMENT FORM

COMPLAINANT'S NAME

v.

ADMINISTRATOR, NASA,
RESPONDENT

Complainant, and *Respondent*, National Aeronautics and Space Administration, (hereinafter NASA, or the Agency) do hereby enter into this agreement to settle the above-captioned complaint. The parties to this Settlement Agreement recognize that this agreement settles claims of discriminatory treatment. The terms and conditions that constitute this agreement are set forth below as follows:

1. The Agency agrees to _____ and/or to provide to the Complainant _____ by or before the expiration of _____ calendar days following the execution of this Settlement Agreement.
2. The Agency further agrees that it will not engage in any act, nor will it approve of or sanction any act, which shall constitute retaliation or reprisal against Complainant resulting from Complainant's involvement in this process.
3. In exchange for this representation, Complainant agrees to the following:
 - (a) By signing this Settlement Agreement, Complainant hereby dismisses and withdraws, with prejudice, this Complaint and all pending complaints against this Agency, regardless of the nature of the complaint including, but not limited to complaints filed by Complainant on _____, _____, _____.
 - (b) Complainant will execute any other document necessary to implement and effectuate the provisions of this Settlement Agreement, including but not limited to a written withdrawal with prejudice of this Complaint, and any other complaint withdrawn pursuant to this agreement.
 - (c) Complainant agrees that none of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement, shall be used by Complainant as the basis for any subsequent action against the United States, or any of its agencies, officers, employees or agents, including without limitation, any individual referenced in the complaint and the record thereof, in any administrative, judicial, or other forum.
 - (d) Complainant agrees to settle, release, and forever discharge the United States, NASA, its officers, and employees, both past and present, in their individual, personal, and official capacities, directly and indirectly from all claims, complaints, appeals,

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demands, debts, damages, attorney fees and costs, and any causes of action whatsoever arising out of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement.

(e) Complainant acknowledges that by virtue of this Settlement Agreement, Complainant is waiving rights and claims under various Federal laws, including but not limited to Title VII of the Civil Rights Act, 42 U.S.C. 2000e, *et seq.*; the Age Discrimination in Employment Act(ADEA), 29 U.S.C. 621 *et seq.*; the Older Workers Benefit Protection Act, 29 U.S.C. 626 *et seq.*; and the Rehabilitation Act, 29 U.S.C. 791 *et seq.*

4. This Settlement Agreement shall be binding upon Complainant as well as Complainant's heirs, assigns, representatives, proxies, guardians, or any other person or entity acting on behalf of, or at the behest of Complainant.

5. This document represents and expresses the entire agreement between Complainant and NASA resolving the above-cited Complaint. No other promises oral or written have been made or if made, are not binding. This document cannot be altered, modified, withdrawn, rescinded, or supplemented in any manner after the date upon which it becomes effective pursuant to the terms contained in Paragraph 11 of this Agreement, unless mutually agreed in writing by the parties.

6. If Complainant believes that for whatever reason, the Agency has not specifically complied with the terms of this Settlement Agreement, Complainant may request that said terms be specifically implemented, or alternatively, that the Complaint be reinstated for further processing at the point processing closed, in accordance with procedures found in 29 C.F.R. 1614.504. Any such request must be made within 30 calendar days of the date the Complainant knows or reasonably should know of the noncompliance. The request must be forwarded to the ASSOCIATE ADMINISTRATOR for EQUAL OPPORTUNITY PROGRAMS, Code E NASA HEADQUARTERS, WASHINGTON, D.C. 20546. The request must include the specific factual grounds supporting Complainant's belief and should include relevant documents and witness statements, if available.

7. If the parties agree that the terms of this Settlement Agreement shall be treated as confidential, no disclosure of this agreement shall be made by any individual without the mutual consent of the parties unless required or permitted by subpoena, court order, law, or regulation, or to any agency officials or employees on a need to know basis.

8. Nothing in this agreement shall be construed as an admission by the Agency of liability or of the allegations underlying the complaint. The Agency neither admits nor finds employment discrimination or any violation of applicable civil service laws or any statute or regulation on the part of its officers or employees, past and present.

9. Complainant acknowledges that Complainant has read and understood all of the provisions of this Settlement Agreement and that Complainant enters into it voluntarily with full knowledge of its effects, conditions, and requirements, and not under any undue hardship, duress, or coercion.

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In Witness Whereof, Complainant hereby executes this document, acknowledging its terms and conditions, that they have been fully understood.

COMPLAINANT

DATE

AGENCY OFFICIAL

DATE

I do hereby declare and affirm that the signatures contained above are true and accurate.

NOTARY

DATE

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APPENDIX D

SAMPLE OLDER WORKERS' BENEFITS PROTECTION ACT (OWBPA) SETTLEMENT AGREEMENT FORM

COMPLAINANT'S NAME

v.

ADMINISTRATOR, NASA,
RESPONDENT

Complainant, and *Respondent*, National Aeronautics and Space Administration, (hereinafter NASA, or the Agency) do hereby enter into this agreement to settle the above-captioned complaint. The parties to this Settlement Agreement recognize that this agreement settles claims of discriminatory treatment. The terms and conditions that constitute this agreement are set forth below as follows:

1. The Agency agrees to _____ and/or to provide to the Complainant _____ by or before the expiration of _____ calendar days following the execution of this Settlement Agreement.
2. The Agency further agrees that it will not engage in any act, nor will it approve of or sanction any act, which shall constitute retaliation or reprisal against Complainant resulting from Complainant's involvement in this process.
3. In exchange for this representation, Complainant agrees to the following:
 - (a) By signing this Settlement Agreement, Complainant hereby dismisses and withdraws, with prejudice, this Complaint and all pending complaints against this Agency, regardless of the nature of the complaint including, but not limited to complaints filed by Complainant on _____, _____, _____.
 - (b) Complainant will execute any other document necessary to implement and effectuate the provisions of this Settlement Agreement, including but not limited to a written withdrawal with prejudice of this Complaint, and any other complaint withdrawn pursuant to this agreement.
 - (c) Complainant agrees that none of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement, shall be used by Complainant as the basis for any subsequent action against the United States, or any of its agencies, officers, employees, or agents, including without limitation, any individual referenced in the complaint and the record thereof, in any administrative, judicial, or other forum.
 - (d) Complainant agrees to settle, release, and forever discharge the United States, NASA, its officers, and employees, both past and present, in their individual, personal, and official capacities, directly and indirectly from all claims, complaints, appeals, demands, debts, damages, attorney fees and costs, and any causes of

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action whatsoever arising out of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement.

(e) Complainant acknowledges that by virtue of this Settlement Agreement, Complainant is waiving rights and claims under various Federal laws, including but not limited to Title VII of the Civil Rights Act, 42 U.S.C. 2000e, *et seq.*; the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.*; the Older Workers Benefit Protection Act, 29 U.S.C. 626 *et seq.*; and the Rehabilitation Act, 29 U.S.C. 791 *et seq.*

4. This Settlement Agreement shall be binding upon Complainant as well as Complainant's heirs, assigns, representatives, proxies, guardians or any other person or entity acting on behalf of, or at the behest of Complainant.

5. This document represents and expresses the entire agreement between Complainant and NASA resolving the above-cited Complaint. No other promises oral or written have been made or if made, are not binding. This document cannot be altered, modified, withdrawn, rescinded or supplemented in any manner after the date upon which it becomes effective pursuant to the terms contained in Paragraph 11 of this Agreement, unless mutually agreed in writing by the parties.

6. If Complainant believes that for whatever reason, the Agency has not specifically complied with the terms of this Settlement Agreement, Complainant may request that said terms be specifically implemented, or alternatively, that the Complaint be reinstated for further processing at the point processing closed, in accordance with procedures found in 29 C.F.R. 1614.504. Any such request must be made within 30 calendar days of the date the Complainant knows or reasonably should know of the noncompliance. The request must be forwarded to the ASSOCIATE ADMINISTRATOR for EQUAL OPPORTUNITY PROGRAMS, Code E NASA HEADQUARTERS, WASHINGTON, D.C. 20546. The request must include the specific factual grounds supporting Complainant's belief and should include relevant documents and witness statements, if available.

7. If the parties agree that the terms of this Settlement Agreement shall be treated as confidential, no disclosure of this agreement shall be made by any individual without the mutual consent of the parties unless required or permitted by subpoena, court order, law, or regulation, or to any agency officials or employees on a need to know basis.

8. Complainant is hereby advised to consult with an attorney prior to signing this agreement. In the event that Complainant has already retained an attorney, Complainant acknowledges that the attorney has reviewed and explained the provisions of this Settlement Agreement.

9. Complainant hereby acknowledges that the Agency has provided Complainant a period of time not less than 21 days, to consider the terms and conditions contained in this agreement prior to final execution if Complainant so requires.

10. Nothing in this agreement shall be construed as an admission by the Agency of liability or of the allegations underlying the complaint. The Agency neither admits nor finds employment discrimination or any violation of applicable civil service laws or any statute or regulation on the part of its

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officers or employees, past and present.

11. Complainant acknowledges that Complainant has read and understood all of the provisions of this Settlement Agreement and that Complainant enters into it voluntarily with full knowledge of its effects, conditions, and requirements, and not under any undue hardship, duress, or coercion.

12. Complainant is hereby notified that the terms and conditions contained herein will become binding and enforceable seven (7) calendar days following the date of execution. At any time prior to the expiration of this seven calendar day period, Complainant may revoke this Settlement Agreement for any reason.

In Witness Whereof, Complainant hereby executes this document, acknowledging its terms and conditions, that they have been fully understood, that an adequate period of time has been afforded to allow for consideration of said terms and conditions, and that an opportunity has been afforded to seek legal counsel, and counsel has either been sought or knowingly declined by the undersigned.

COMPLAINANT

DATE

AGENCY OFFICIAL

DATE

I do hereby declare and affirm that the signatures contained above are true and accurate.

NOTARY

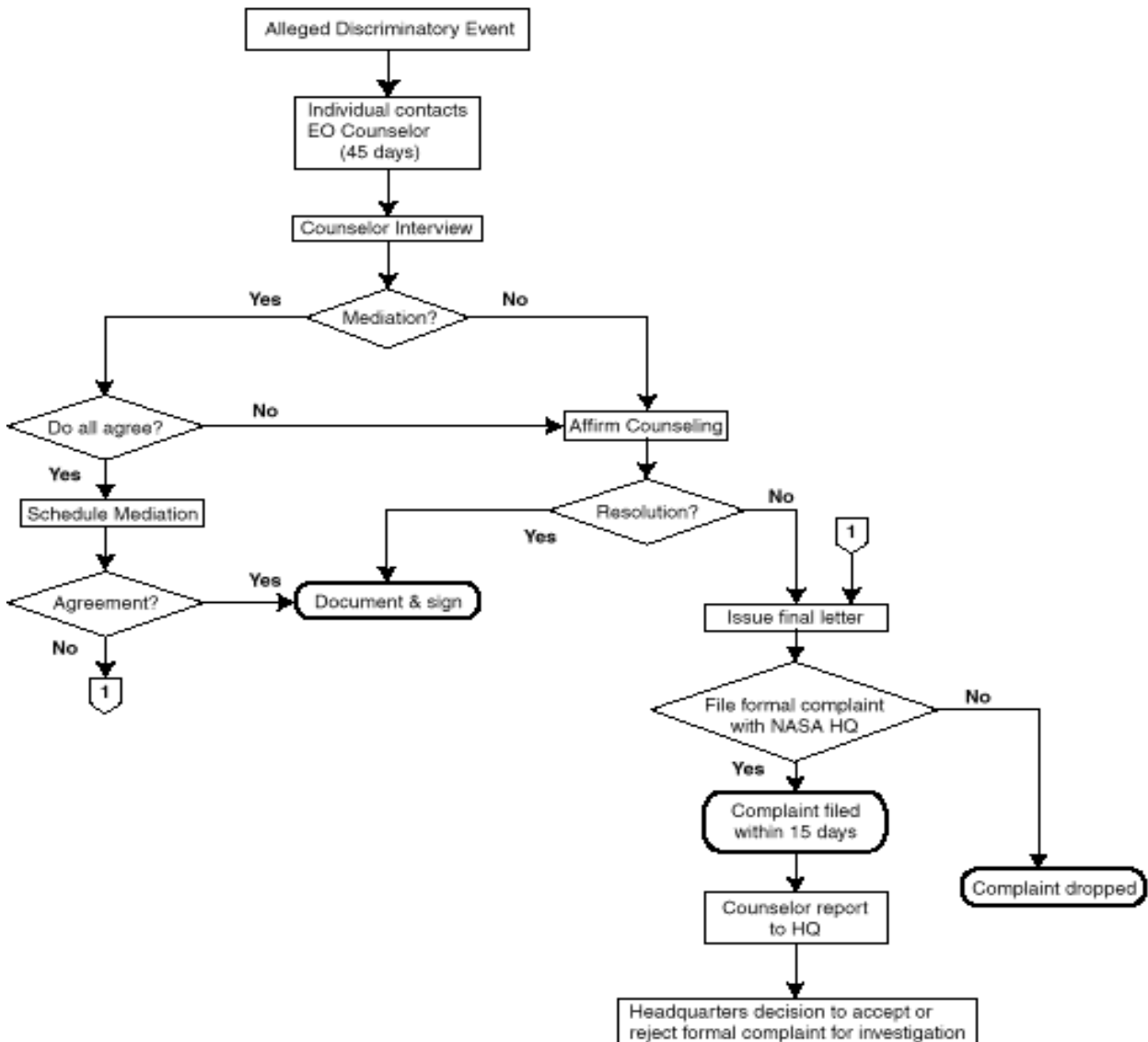
DATE

NOTE: If there are any other rights, particularly ADEA rights conferred upon the Complainant which are being waived pursuant to this agreement, those rights must be specifically set forth in the agreement.

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APPENDIX E

Informal EO Complaint Process



Note: Counseling and mediation shall not exceed 60 days

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